

STATE OF MICHIGAN
COURT OF APPEALS

ALEXANDER YOVAN,

Plaintiff,

and

MARY YOVAN,

Plaintiff-Appellant,

v

IVETA BACAROVA and JAROSLAV
JEDINAK,

Defendants-Appellees.

UNPUBLISHED

May 4, 2006

No. 258976

Oakland Circuit Court

LC No. 2003-054990-NI

Before: Neff, P.J., and Saad and Bandstra, JJ.

NEFF, J. (*dissenting*).

I respectfully dissent. Considering the totality of the circumstances in this case, I would reverse the grant of summary disposition on the basis that it cannot be said, as a matter of law, that plaintiff's injuries did not affect her general ability to lead her normal life.

The standard established in *Kreiner v Fischer*, 471 Mich 109, 133-134; 683 NW2d 611 (2004), requires consideration of various objective factors in determining whether an injury constitutes a serious impairment of an important body function, including, but not limited to, the nature and extent of the impairment, the type and length of treatment required, the duration of the impairment, the extent of any residual impairment, and the prognosis for eventual recovery. None of the individual factors are intended to be dispositive by themselves. *Id.*

This case exemplifies the rationale for the case-specific standard in *Kreiner*. Although plaintiff's injuries were not extensive, they were painful and the resulting impairment is long-term and, according to the evidence, debilitating. Under these circumstances, plaintiff has met the threshold requirement enunciated in *Kreiner* for seeking noneconomic damages. *Id.* at 130.

Plaintiff suffered several broken ribs and a collapsed lung, which necessitated only limited medical treatment, in large part due to the nature of the injury. A July 27, 2004, report from plaintiff's treating physician stated that plaintiff's most recent chest x-ray showed six healing left side rib fractures, and that after fourteen months, *no further healing or improvement*

was likely. Accordingly, there was no further medical treatment that would improve plaintiff's status. The physician suggested that plaintiff seek chronic pain management, which could assist her in making *lifestyle changes* that may be of some benefit (emphasis added).

Although plaintiff was 76 years old at the time of the accident, she was in excellent health and led an active life. Plaintiff now suffers from chronic rib and muscle pain, with a partial dislocation of the ribs at the spine and inflammation of the muscles between the ribs from tearing and scarring. She is unable to wear a bra or lift more than 10-12 pounds because of the added pressure on her ribs. She can no longer follow her regimen of daily walks. Because of the residual rib injuries, she can no longer care for her grandchildren, cook, clean, garden, or travel as she regularly did before the accident. The evidence indicates that plaintiff's pain will likely worsen as her rib joints will suffer from deteriorating osteoarthritis caused by the accident.

In assessing whether the course of one's normal life has been affected, a court should compare the individual's lifestyle before and after the injury. *Id.* at 132. An injury need not be permanent to be an impairment of an important body function. *Id.* at 135. In this case, despite her age, plaintiff led a healthy and active life before the automobile accident. After the accident, she can no longer undertake the activities that comprised her preaccident life.

The medical record and the deposition testimony support a conclusion that plaintiff's injuries from the accident have affected her "general ability" to conduct the course of [her] normal life." *Kreiner, supra* at 133. The evidence establishes that plaintiff suffers from severe residual impairment. "[W]here there is evidence that the physician has pinpointed a physiological basis for the pain or believes that the patient is truly suffering pain, such evidence, while not conclusive, lends support to a conclusion that instructions by the physician constitute physician-imposed restrictions." *McDaniel v Hemker*, 268 Mich App 269, 284-285; 707 NW2d 211 (2005). The impairment is likely permanent. Plaintiff's physician indicated that her only recourse is to change her lifestyle to accommodate her disability. Viewing the effect plaintiff's injury has had on her normal life, I conclude that her injury meets the threshold requirement under *Kreiner*.

/s/ Janet T. Neff